

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

DOREA M. ELMADIH) CIVIL ACTION NO:
)
VERSUS) JUDGE
)
PRIMARY HEALTH SERVICES) MAGISTRATE JUDGE
CENTER, <i>ET AL</i>	

NOTICE OF REMOVAL OF CIVIL ACTION FROM CITY COURT

**TO: THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF LOUISIANA:**

NOW INTO COURT, comes the United States of America, through undersigned counsel, and pursuant to 28 U.S.C. § 1346, 42 U.S.C. § 233(c), and 28 U.S.C. §§ 1441(a), *et seq.*, hereby files this Notice of Removal representing as follows:

1. This action was commenced on or about May 29, 2015, by the filing of the *Petition for Damages* styled *Dorea M. Elmadih versus Primary Health Services Center, et al*, in the Monroe City Court, Parish of Ouachita, State of Louisiana, bearing Docket No. 2015CV1640.
2. Primary Health Services Center and Fekri T. Abdulla, D.D.S. are named as defendants in the *Petition for Damages*. It is unknown if or when the Citation and Petition were served on defendants.
3. Copies of the Citation and Petition are attached hereto as Exhibit A. Neither the Citation nor the Petition has been served upon the Attorney General or the United States Attorney for the Western District of Louisiana. Therefore, this removal is timely made. 28 U.S.C. § 1446(b).

4. The above described action is a civil action involving the interests of the United States. The Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2401(b), 2671-2680, is a limited waiver of sovereign immunity and the exclusive remedy for negligent or wrongful acts or omissions of federal employees. The FTCA is the basis for medical malpractice claims against government physicians. The Federally Supported Health Centers Assistance Act (FSHCAA), 42 U.S.C. § 233(g) (n), was originally enacted in 1992 and amended in 1995 in response to steadily increasing medical malpractice insurance costs that had an adverse impact on the ability of Department of Health and Human Services grantees to furnish primary health care services to medically underserved populations. H. Rep. No. 104-398 at 4, reprinted at 1996 U.S.C.C.A.N. 769. To remedy this situation, the FSHCAA provides that in certain cases HHS grantees and their employees and specified contractors are “deemed” to be employees of the Public Health Service, and thus, federal employees. 42 U.S.C. § 233(g)(1)(A). Courts do not inquire into the sufficiency of the deeming process. *McLaurin v United States*, 392 F.3d 774, 778 (5th Cir. 2004). Subsection (a) of the FSHCAA states that the FTCA is the exclusive remedy for “damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions” by Public Health Service employees acting within the scope of employment. 42 U.S.C. § 233(a). Consequently, one wishing to pursue a malpractice suit against a deemed health center, or its employees or covered contractors, must comply with the terms of the FTCA, including its stringent exhaustion requirements.

5. Plaintiff alleges medical malpractice by Primary Health Services Center and Fekri T. Abdulla, D.D.S. The Secretary of Health and Human Services deemed Primary Health Services Center eligible for FTCA malpractice coverage on January 1, 2012, and that coverage has continued without interruption since that time. *See* Exhibit B. Upon information and belief, Fekri

Abdulla, D.D.S. was an employee of Primary Health Services Center acting within the scope of his employment at all times relevant to the Petition. *Id.*

6. On the basis of the foregoing, the United States of America removes this action to the United States District Court for the Western District of Louisiana, Monroe Division, pursuant to 42 U.S.C. § 233(c) and 28 U.S.C. §§ 1441(a) and 1442.

WHEREFORE, the United States of America files this Notice of Removal of suit number 2015CV1640, entitled *Dorea M. Elmadih versus Primary Health Services Center, et al*, pending in the Monroe City Court, Wards Three and Ten, Parish of Ouachita, State of Louisiana, which is **CONSIDERED REMOVED** to the United States District Court for the Western District of Louisiana upon the filing of this Notice of Removal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the above and foregoing pleading was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to the following by First Class United States Mail properly addressed and postage prepaid.

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